

## Can medical paternalism be justified?

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The Dr. Logie medical ethics essay contest is open to students studying at Canadian medical schools. The contest, named in honour of Canada's first medical graduate, is sponsored by the Association of Canadian Medical Colleges, the Canadian Association of Internes and Residents, the Canadian Federation of Medical Students, the Fédération des médecins résidents et internes du Québec and the Canadian Medical Association. Here we present the first-prize winner.

**M**edical paternalism is a complex problem that receives a lot of attention. Medical paternalism, even the term "paternalism", lacks a complete and satisfying definition. Paternalism involves the actions of one person for the welfare of others but not necessarily with their fully informed consent or permission, but this definition fails to outline what actions constitute paternalism or medical paternalism.

An action is medically paternalistic if it limits or restricts the autonomy of the patient, and an autonomous agent must be competent and be able to make voluntary and intentional decisions and understand their consequences.

Mill asserts that medical paternalism is always wrong.<sup>1</sup> He defines paternalism as limiting the freedom of action of patients and acting for their benefit against their will. Any paternalism is wrong unless the free action of the agent may hurt others. Since medical paternalism involves acting for the welfare of the patient and does not usually

fall under this category, Mill's theory states that medical paternalism is always wrong. His theory does not include the paternalism of incompetents, such as children, since they are not classified as autonomous agents, and it is a utilitarian point of view as it assumes freedom, and therefore autonomy, must be guaranteed to maximize happiness.

Others feel Mill has proposed a theory that is too rigid for medicine. Buchanan attempts to expand on Mill's definition.<sup>2</sup> Withholding information, giving only partial information or giving false information to either the patient or the patient's family is paternalism. He emphasizes the importance of weighing out consequence on balance through his prevention of harm argument: Truth telling may initially cause pain, but it may be less painful in the long run than withholding information. The patient's family must be considered when judging the long-term

balance and this is difficult because it involves complex decisions made by the physician.

The best and most workable definition is proposed by Culver and Gert.<sup>3</sup> According to them, agents act paternalistically toward a patient if

- the agents believe that their action benefits the patient
- their action involves violating a moral rule with the patient
- they do not have the informed consent of the patient
- the patient is competent to give consent.

Under these guidelines, physicians can be paternalistic without realizing their action violates the moral rules against the patient (the second condition).

These conditions distinguish two forms of paternalism. Weak paternalism occurs if conditions 1 to 3 are satisfied but the patient is not competent and, therefore, not autonomous, ie, parenting. Generally, weak paternalism is justified, and deontologists assert physicians have a duty to protect those considered incompetent.

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Strong paternalism is controversial: Mill rejects it and Buchanan feels it is wrong but emphasizes his prevention of harm argument and the importance of looking at each case individually. Culver and Gert feel that in certain circumstances strong paternalism is justified.

The best approach is to decide what guidelines will be applied to cases of paternalism, and then use them carefully. Each case must be treated individually. The practice of medicine is not physics, and the same disease does not warrant identical treatment every time. Medication for the pathology may be theoretically the same each time, but the actions and the attitudes of the physician must be flexible. Patients are humans that have desires and beliefs which must be respected. This doesn't mean a physician should never override the wishes of patients, but that their desires should be added to the equation.<sup>4</sup> Culver's and Gert's guidelines are sufficient, but they

are just guidelines, not laws. Patients are demanding autonomy, the right to know the truth about their condition and the right to refuse treatment if they desire.

Is the physician in a position of authority? In the sense of medical knowledge, yes, because this is a position the physician has earned. But when a patient refuses treatment, the physician is not an authority on what is best for the patient — the autonomous patient is. When doctors extend treatment to those who refuse it, doctors leave their positions of authority and move to one of power. Authority is the legitimate status of decision-maker for others, but power is not necessarily the legitimate coercion of others.<sup>5</sup>

Paternalism has forced doctors to examine carefully the purpose of medicine. Cassel said medicine's purpose is to preserve autonomy, allowing patients to be true to themselves.<sup>6</sup> However, illness can undermine authenticity and patients may change their

fundamental beliefs over time (especially during stress) and believe the purpose of medicine is to preserve life at any cost. Campbell feels that often the duty of physicians to preserve life is overridden by their duty to respect it.<sup>7</sup>

When is paternalism justified? Children are not autonomous agents, and administering treatment without their consent does not remove their autonomy. This applies to incompetent adults — the mentally ill or the mentally retarded. In these cases, the best standard of life for the patient must be preserved.

It is difficult to make clear distinctions in situations that involve the fetuses of pregnant women, the elderly who may have lost their former capacities or competent adults who are either severely ill or acting inauthentically.

Jehovah's Witnesses believe God has forbidden the ingestion of human blood in any form, and devoted followers will refuse

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blood transfusions necessary for survival. If competent adults have reached this conclusion, physicians have no right to override their religious convictions.

If a Jehovah's Witness is pregnant, then the situation is more complex. Mill stated that paternalism is wrong unless the free action of the patient has adverse effects on another.<sup>1</sup> A pregnant woman refusing treatment clearly has adverse effects on her unborn child and, for this reason, physicians retain the right to administer treatment paternalistically.

Very often, physicians see senile or severely ill patients or those in a coma to be cases of weak paternalism and act as they see fit. This is not always the best course of action. Family members should be consulted and allowed to act as autonomous agents for the patient as long as they are competent. In all probability, they know the patient better than anyone else, and their opinions and concerns should be respected.

The physician may know exactly how the patient feels about sustaining life artificially or the patient may have clear instructions or wishes. Still, physicians tend to ignore this knowledge — perhaps because they fear it — but it is the best insight into the patient they could possibly have. If patients make their choices clear when they are fully competent and fully informed, physicians are morally wrong to override their decision. This is true whether sustaining life or allowing patients to die when they wish to be kept alive as long as possible.

There are many examples — from the elderly patient who 6 years earlier delivered a speech on the miseries of prolonging the life of the dying elderly and who is now bedridden and incompetent, to the physician who contracted cancer and despite his clear and well-understood wishes, had his heart artificially restarted five times. He was kept alive by artificial heart and lung machines.<sup>8</sup>

These patients should be al-

lowed to die with dignity and their wishes should be respected.

When a presumably competent adult wants to suspend treatment, the physician must proceed with caution. Illness does not remove autonomy, although this is a convenient assumption used by physicians to condone their paternalistic behaviour. Patients want to understand their problem and participate in determining what actions will be taken. If patients ask the extent of their pathology, they have a right to know. If they do not, it may be best not to tell them because they may not want to know or may not want to face their situation.

When illness removes autonomy, paternalism is justified. This was true in the case of a 38-year-old man who discovered he had bacterial meningitis — action had to be taken immediately or death would have quickly ensued. The patient chose to refuse treatment and be allowed to die.<sup>9</sup> Because this would not be the choice of most people, the physician should suspect that the patient is not acting authentically and is not truly autonomous. Here paternalism would be justified.

Similarly, a patient who has had a severe accident and is bleeding and in shock is not likely to be autonomous. Often, people will ask to be allowed to die if they think, or know, they will be paralyzed. Later, they are thankful that the physician decided to save them.

It is a grave mistake to assume the parents of children who are dying are not competent to receive the information. The best guide is Buchanan's prevention of harm argument. Parents have the right to know the extent of damage and the outlook for their children. If this information is not known, even by the physician, then the parents should be told this. In the case of parents of defective newborns, physicians often wait to tell the parents after parent-infant bonding has taken place. This is justified because bonding is vital to any infant and because the parents' initial reaction may be repulsion.

Should children be told of their poor prognosis? The best judges are usually the parents. Age, maturity, condition and personality of the child are factors.

There are many cases but few clear answers. Being a physician, or indeed any health professional, requires not only a great deal of knowledge and expertise, but also compassion and respect. For a physician to look at a patient not as a set of symptoms but as someone who needs help is difficult at times but paramount to being a good physician.

Pellegrino states: "A new relationship must evolve between patient and physician to recognize that the clinical decision — the heart of medicine — the choice of what is to be done, cannot be the exclusive privilege of one or the other. That decision must arise somehow, in the ground between someone in need, a patient, and someone who professes to alleviate that need, the healer."<sup>10</sup>

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